

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

FRED ZEIGLER,

Plaintiff,

Civil Action No.:
1:07-cv-09231-JSR

-- against --

ATLANTIC CASUALTY INSURANCE
COMPANY,

**AFFIDAVIT OF
MYRISSA DIXON**

Defendant.

-----X

STATE OF NORTH CAROLINA)
) ss.:
COUNTY OF WAYNE)

MYRISSA DIXON, being duly sworn, deposes and states:

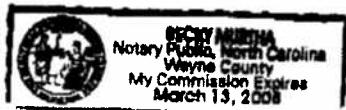
1. I am a litigation examiner at American Claims Service, and handle claims for Plaintiff Atlantic Casualty Insurance Company ("Atlantic Casualty"). I am responsible for handling the claim at issue herein, including the claims by Plaintiff Fred Zeigler ("Plaintiff") under the Atlantic Casualty insurance contract at issue. As such, I am fully familiar with the facts as set forth herein based on my review of the records and handling of this matter.

2. I submit this Affidavit in support of Atlantic Casualty's opposition to Plaintiff's Motion to Remand to State Court.

3. On or about August 30, 2007, Plaintiff filed the captioned action against Atlantic Casualty. Attached hereto as **Exhibit A** is a true and correct copy of the Plaintiff's complaint in the captioned action.

4. Atlantic Casualty was served with the summons and complaint in the captioned action on September 26, 2007.

WHEREFORE, Atlantic Casualty respectfully requests that this Court deny Plaintiff's Motion to Remand to State Court.



Myriassa Dixon
MYRIASSA DIXON

Sworn to before me this
30 th day of November, 2007

Becky Martha
Notary Public

MYRISSA DIXON AFFIDAVIT

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
FRED ZEIGLER,

INDEX NO. 07-401767

Plaintiff,

- against -

SUMMONS

ATLANTIC CASUALTY INSURANCE COMPANY,

Defendant.

----- x

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint, in this action, which is herewith served upon you together with copies of all prior pleadings in this action, and to serve a copy of your answer upon the undersigned, attorneys for third-party plaintiff, within twenty (20) days after the service thereof exclusive of the date of service, or if the service of the summons is made by any means other than by personal delivery to you within the State of New York within thirty (30) days after such service is completed. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 30, 2007

HANLY CONROY BIERSTEIN
SHERIDAN FISHER & HAYES, LLP

By: Melissa C. Welch
Melissa C. Welch

Attorneys for Plaintiff
112 Madison Avenue
New York, New York 10016
Telephone: 212-784-6406
Facsimile: 212-784-6420

TO: Nixon Peabody LLP
437 Madison Avenue
New York, New York 10022
Phone: 212-940-3000
Fax: 212-940-3111

Attorneys for Defendant

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
FRED ZEIGLER,

Plaintiff,

- against -

ATLANTIC CASUALTY INSURANCE COMPANY,

Defendant.

----- : INDEX NO. 07-401767

----- : COMPLAINT

----- x

Plaintiff, Fred Zeigler ("Zeigler") by his attorneys, Hanly Conroy Bierstein Sheridan Fisher & Hayes, LLP, as and for his complaint against defendant Atlantic Casualty Insurance Company ("Atlantic"), hereby alleges as follows:

NATURE OF THE ACTION

1. This declaratory judgment action arises out of a complaint by Richard and Kate Freedman (the "Freedmans") against Zeigler for negligence in connection with alleged water damage to their apartment, located at 60 E. 9th St., #326, New York, New York, alleged to have been caused by construction in Zeigler's former apartment, located at 60 E. 9th St., #526, New York, New York. That complaint, Index No. 06-110462/06-590898, is currently pending before this Court (the "Original Action").

2. Zeigler originally brought Atlantic into the Original Action as a third-party. However, an order of the Court dated March 21, 2007 severed Atlantic from the Original Action. Zeigler was ordered to obtain a new index number. The order stated that those portions of the pleadings from the Original Action pertaining to Zeigler and Atlantic would stand as the pleadings in the declaratory action. There have been no substantive changes to this complaint.

JURISDICTION AND VENUE

3. Jurisdiction is proper over defendant in the Court pursuant to CPLR § 301; venue is proper in New York County pursuant to CPLR § 503 based on plaintiff's residence.

THE PARTIES

4. Zeigler is an individual residing at 520 West 23rd St., Apt 4B, New York, NY 10011.

5. Atlantic Casualty Insurance Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office located at 400 Commerce Court, Goldsboro, North Carolina 27533. Atlantic Casualty does business in New York and is subject to jurisdiction here.

FACTS

8. In March 2004, Zeigler hired Matthew Schwartz ("Schwartz") and New Phase Renovations, Inc. ("New Phase"), Schwartz's company, to perform construction work in Zeigler's apartment, located at 60 E. 9th St. #526, New York, New York.

9. As part of his contract with New Phase, Zeigler was listed as an additional insured on New Phase's insurance. He received a copy of a certificate of insurance from New Phase listing him as an additional insured. The insurance was provided by Atlantic Casualty.

11. On or about August 26, 2004, Schwartz and New Phase were performing construction work in Zeigler's apartment. The Freedmans allege that as a result of that construction work, there was water damage to the Freedmans' apartment.

FIRST CAUSE OF ACTION AGAINST ATLANTIC CASUALTY

12. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 11 hereof.

13. Any injuries alleged by the Freedmans against Zeigler were proximately caused, in whole or in part, by Atlantic Casualty's breach of contract.

14. As a result of Atlantic Casualty's breach of contract, Zeigler demands indemnification or contribution toward any recovery by the Freedmans against Zeigler.

15. Atlantic Casualty's breach of contract proximately caused Zeigler to sustain actual damages, including but not limited to attorneys' fees and other costs associated with the defense of this action.

16. By reason of the foregoing, Zeigler is entitled to compensatory damages in an amount to be determined at trial.

WHEREFORE, Zeigler requests judgment against third-party defendants, jointly and severally, as follows:

- a. Indemnification or contribution toward any recovery by the Freedmans against Zeigler;
- b. Compensatory damages and attorneys' fees;
- c. Interest on all sums awarded at the legal rate; and
- d. Such other and further relief as the Court may deem just and proper, including the costs and disbursements of this action.

Dated: New York, New York
August 30, 2007

HANLY CONROY BIERSTEIN
SHERIDAN FISHER & HAYES, LLP

By: Melissa C. Welch
Melissa C. Welch

Attorneys for Plaintiff
112 Madison Avenue
New York, New York 10016
Telephone: 212-784-6406
Facsimile: 212-784-6420

TO: Nixon Peabody LLP
437 Madison Avenue
New York, New York 10022
Phone: 212-940-3000
Fax: 212-940-3111

Attorneys for Defendant